SUBJECT: Defining prompt production of public information

COMMITTEE: State Affairs — favorable, without amendment

VOTE: 7 ayes — Marchant, Madden, J. Davis, B. Cook, Elkins, Gattis, Goodman

0 nays

2 absent — Lewis, Villarreal

WITNESSES: For — (*Registered, did not testify:)* Donnis Baggett, Texas Daily Newspaper Association, Texas Press Association; Mindy Carr, Texas Land Title Association; Ann Fickel, Texas Classroom Teachers Association; Randy Lee, Stewart Title Guaranty Company; Kathy Mitchell, Consumers Union; Keith Oakley, Texas Association of Licensed Investigators; Ted Melina Raab, Texas Federation of Teachers; Paul Watler, Freedom of Information Foundation of Texas, Texas Association of Broadcasters, Belo Corporation; Suzy Woodford, Common Cause

Against — None

On — Katherine Missy Cary, Office of the Attorney General, Open Records Division

BACKGROUND: Government Code, sec. 552.221(a) requires that a public information officer of a governmental body "promptly produce" public information for inspection and/or duplication when requested.

If a governmental body wishes to withhold information from public disclosure under a statutory exception, Government Code, sec. 552.301 sets a deadline of 10 business days for its public information officer to request an attorney general's opinion and to notify the original requestor that the attorney general will decide whether the information will be released.

In 2000, Attorney General John Cornyn issued an opinion interpreting Government Code, sec. 552.221(a) "promptly" to mean "as soon as possible

under the circumstances, that is, within a reasonable time, without delay." (Open Records Decision No. 664, February 8, 2000)

DIGEST:

HB 1033 would amend Government Code, sec. 552.221(a) to define "promptly" to mean "as soon as possible under the circumstances, that is, within a reasonable time, without delay" for purposes of producing public information.

The bill would take immediate effect if finally passed by a two-thirds record vote of the membership of each house. Otherwise, it would take effect September 1, 2003.

SUPPORTERS SAY:

HB 1083 would codify an open records opinion by Attorney General John Cornyn, thus making legislative intent clear regarding a governmental body's prompt response to public information requests. Decisions by attorneys general may be overturned by a court of law or may be reinterpreted later by other elected office holders. HB 1083 would make it less likely that the courts would overturn the attorney general's interpretation of this section of the code.

HB 1083 would clear up confusion on the part of many governmental bodies about how long they have to respond to simple open records requests. Because the only explicit deadline for open records requests is in Government Code, sec. 552.301, many agencies routinely take 10 business days to respond to all open records requests, even when a request easily could be filled sooner. Clarifying the definition of "promptly" would help eliminate unnecessary delays due to a simple misunderstanding of the law.

HB 1083 would leave enough flexibility in the law for governmental bodies of all sizes to respond in a reasonable manner to open records requests. The language "as soon as possible under the circumstances" would be broad enough to apply to public information officers in many settings. For example, the reasonable response time for a city secretary who worked only one day a month would be longer than the reasonable response time for a public information officer in a large state agency with 3,000 employees.

OPPONENTS SAY:

No apparent opposition.

NOTES:

The companion bill, SB 84 by Wentworth, identical to HB 1083, passed the Senate on March 19 by 31-0 and was referred to the House State Affairs Committee on March 26.